IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 23RD MARCH 2007 / 2ND CHAITHRA 1929

Crl.MC.No. 455 of 2007()

AGAINST THE ORDER IN CRMP 3262 2006 IN
SC.499/2006 of II ADDL. SESSIONS COURT, PALAKKAD

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PETITIONER: COMPLAINANT:

THE INTELLIGENCE OFFICER,
NARCOTICS CONTROL BUREAU, REGIONAL
INTELLIGENCE UNIT, THIRUVANANTHAPURAM

BY ADV. SRI.C.P.UDAYABHANU

RESPONDENTS:
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1. HAMEED ALI, AGED 44, S/O.NABEESA UMMA,
VELLERIYIL HOUSE, SUNEERA MANZIL,
HARMONY STREET, PATTAMBI, PALAKKAD DISTRICT.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.T.K.SAIDALIKUTTY
SRI.P.A.MOHAMMED ASHROF
SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN
SMT.SHEENA SAMUEL
R2 BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 23/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 455 of 2007

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Dated this the 23rd day of March, 2007

O R D E R

The petitioner is the Intelligence Officer of the Narcotics Control Bureau, Regional Intelligence Unit, Trivandrum. He has come to this court aggrieved by the order passed by the learned Sessions Judge, Palakkad in S.C.No. 499 of 2006, wherein the accused persons face indictment for offences punishable under the N.D.P.S. Act. 7.785 grams of heroin were allegedly seized. Accused 1 and 2 are allegedly persons, who were found transporting this large quantity of contraband article. The first respondent (3rd accused) is allegedly the person, who had financed and was the master mind behind the transaction. Accused 2 and 3 have already been granted bail.

2. When the application for bail filed by the accused came up for consideration before the learned Sessions Judge, the learned Sessions Judge granted bail, subject to conditions. I extract the relevant portion of the order below:

> "An application for bail by the 4th accused. Special Prosecutor filed counter. Heard.
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> 2. Hon'ble High Court had already granted bail to 1st and 2nd accused. So I am satisfied that 4th accused can also be granted bail on imposing the following conditions."

3. The learned counsel for the petitioner submits that the learned Sessions Judge has grossly failed in not adverting to the relevant circumstances while considering the application for grant of bail in a prosecution under the N.D.P.S. Act. The learned counsel for the petitioner submits that the learned Judge does not appear to have been cognizant of the rigor of the provisions of Section 37 of the Act. There is no contention before me that Section 37 has no application. The impugned order does not even show whether the application was opposed by the Prosecutor. A perusal of Section 37 must reveal that the question whether the Prosecutor has opposed the application or not is a matter of crucial relevance. I am at a loss to understand how the learned Sessions Judge, without adverting to that circumstance at all, proceeded to consider the application for bail.

4. The learned counsel for the petitioner submits that in fact the petitioner had filed a detailed written objection to the application for bail of the respondent herein. In spite of that, even the fact that such an objection has been filed and the prosecution is opposing the bail application, has not been referred to at all, not to speak of the omission to refer to the specific

objections raised in such statement filed.

5. When the application for bail is opposed by the Prosecutor, bail can be granted to an accused under Section 37 only if the Court is in a position to entertain the twin satisfaction contemplated under Section 37 of the Act. I find that in the impugned order no reference has at all been made to those circumstances.

6. The only reason on which the decision of the learned Sessions Judge rests is the fact that accused 1 and 2 have been granted bail. I find merit in the submission of the learned counsel for the petitioner that the learned Sessions Judge has not even adverted to the question whether accused 1 and 2 as also the respondent/accused are facing identical allegations or not. The nature of the materials against them - difference and distinction, if any - have also not been adverted to by the learned Sessions Judge at all.

7. I do note that the seizure had taken place on 15.3.2006. I do further note that the investigation in the case is complete and the final report has already been filed. The Sessions Case has already been registered also. In these circumstances I am of the opinion that the ideal course to be followed by this Court is to set aside the impugned order and direct the learned Sessions Judge to consider the matter afresh after hearing

both sides and pass an order after adverting to all relevant circumstances. The application is to be disposed of in accordance with Section 37 of the N.D.P.S. Act.

8. Only one question remains. What arrangement must be made till such application is disposed of afresh? I am satisfied that in the peculiar facts and circumstances of this case, the respondent/accused can be directed to appear before the learned Sessions Judge on 2.4.2007. The learned Sessions Judge shall consider the application for bail afresh and dispose of the same within a period of 7 days from that date. The respondent/accused need not be sent to prison until the disposal of the application. The learned Sessions Judge shall take appropriate decision in the bail application and shall thereafter release or remand the accused.

9. This Crl.M.C. is accordingly allowed to the above extent. I may hasten to observe that no observation made in this order shall fetter the powers of the learned Sessions Judge to consider the materials before him and pass appropriate orders regarding the claim for bail.

10. Hand over copy of the order to both counsel.

(R. BASANT)
Judge

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